United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

Signed

76-4192

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

EGON RADVANY and RUTH RADVANY,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

ON APPEAL FROM THE DECISION OF THE

UNITED STATES TAX COURT

BRIEF FOR THE APPELLEE

B P/S

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TABLE OF CONTENTS

CITATIONS

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STATEMENT OF THE ISSUES PRESENTED

1. Whether the United States Tax Court correctly sustained the Commissioner's determination that the taxpayers were not entitled to a deduction for expenses incurred for employment-related dependent care services in light of the income limitations on such deductions under Section 214(d) of the Internal Revenue Code of 1954.

2. Whether there is any basis in this case for holding that the taxpayers should be absolved from paying interest on the deficiency as provided by Section 6601 of the Internal Revenue Code of 1954.

STATEMENT OF THE CASE

This case involves federal income taxes for the tax year 1972 in the amount of $831.39. Taxpayer instituted these proceedings in the United States Tax Court for a redetermination of the deficiency determined by the Commissioner. The Memorandum findings of fact and opinion of the Tax Court,[1/] which are reported at P-H Memo T.C., par. 76,169, were filed on May 27, 1976. On the same date, the Tax Court entered its decision sustaining the Commissioner's determination. On July 22, 1976, the taxpayers timely filed a notice of appeal to this Court. (Docket entries.) Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

The material facts may be stated as follows:

The taxpayers, husband and wife, who filed a joint federal income tax return for the year in question (1972), had adjusted gross income for that year of $45,522.22. During that year, taxpayers paid $1,779 for employment-related expenses which were incurred for child care at a nursery school outside the taxpayers' household. (Op. 2.)

The taxpayers deducted the $1,779 in child care expenses on their 1972 return. The Commissioner disallowed the deduction

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1/ Taxpayer has not filed a separate record appendix in accordance with the provisions of Rule 30(a) of the Federal Rules of Appellate Procedure. Accordingly, we have reproduced, in Appendix B to this brief, the Tax Court's docket entries, decision and opinion.

and the Tax Court sustained this determination on the ground that no deduction was allowable in light of the income limitations imposed by Section 214(d) of the Internal Revenue Code of 1954, which, in general, reduces the amount of child care deductions otherwise allowable under Section 214 by one half of the amount by which the taxpayers' adjusted gross income for the year in question exceeds $18,000. (Op. 2.) From its decision in favor of the Commissioner, taxpayers bring this appeal.[2/]

SUMMARY OF ARGUMENT

Section 214 of the Internal Revenue Code of 1954 allows for a deduction for certain child care expenses. The amount allowable as a deduction, however, is reduced by half of the amount by which the taxpayers' adjusted gross income exceeds $18,000. In the case at bar, the taxpayers' adjusted gross income for the year in question exceeds $45,000, and, thus, no deduction is allowed because of the limitations written into the section.

The taxpayers nevertheless argue that the Commissioner should not be able to disallow the child care deduction in

---

2/ On brief, taxpayers challenge the Tax Court's decision with respect to the deficiency in income taxes, and also challenge the right of the Commissioner to assess interest with respect to such deficiency. The decision, however, does not purport to determine the taxpayer's liability for interest, and, as we indicate in Argument II, infra, the question of interest was not properly before the Tax Court.

question on the ground that the wording of an Internal Revenue Service pamphlet led them to believe that the costs incurred in obtaining employment-related child care services outside their own home, would be deductible without regard to the limitations imposed by the statute. This argument is without merit. Not only does the pamphlet they assertedly relied on in claiming the deduction not purport to exempt such child care expenses from the statutory income limitations, it is well settled that the Commissioner is not bound or estopped even by formal rulings, let alone by a publication of the type taxpayers rely on.

The taxpayers further argue that they should not be ordered to pay any interest on any tax due, basing this argument on the same Internal Revenue Service pamphlet and on a conversation they had with an employee of the Internal Revenue Service. Neither the publication, nor a conversation with an Internal Revenue employee can prevent the Commissioner from properly assessing and collecting the interest due. But wholly apart from the merits of taxpayers' argument, the question of interest on the deficiency simply was not before the Tax Court, and was not determined by its decision. Even where interest is improperly assessed, taxpayers' remedy is to pay such interest and institute proceedings for a refund.

ARGUMENT

I

THE TAX COURT CORRECTLY DENIED THE CLAIMED CHILD CARE EXPENSE DEDUCTION

Section 214 of the Internal Revenue Code of 1954, Appendix A, infra, allows a deduction for certain dependent care expenses incurred to enable the taxpayer to be gainfully employed. The Commissioner does not dispute that the taxpayers' expenses are of the type contemplated in Code Section 214. Rather, the point of dispute between the taxpayers and the Commissioner centers on the limitation imposed on the amount of the allowable deduction under Section 214(d), which provides as follows in this regard:

> (d) Income Limitation.--If the adjusted gross income of the taxpayer exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred during any month of such year which may be taken into account under this section shall * * * be further reduced by that portion of one-half of the excess of the adjusted gross income over $18,000 which is properly allocable to such month. For purposes of the preceding sentence, if the taxpayer is married during any period of the taxable year, there shall be taken into account the combined adjusted gross income of the taxpayer and his spouse for such period.

This income limitation applies to the entire section-- that is, whether a taxpayer claims a deduction based on in-house child care expenses, or on out-of-house child care expenses, the taxpayer is not allowed a deduction which will exceed the income limitation. The Treasury Regulations promulgated pursuant to Code Section 214 quite clearly make this point. Section 1.214A-1

of the Treasury Regulations on Income Tax, Appendix A infra, provides as follows[3/]

> (a) In general. (1) * * * No deduction shall be allowed under section 214 in respect of any expenses incurred during a taxable year beginning after March 29, 1975, for which the taxpayer's adjusted gross income is $44,600 or more (or incurred during a taxable year beginning after December 31, 1971, and before March 30, 1975, for which the taxpayer's adjusted gross income is $27,600 or more.) * * *

The Treasury Regulations, like Code Section 214, do not draw a distinction between in-house and out-of-house expenditures. Since taxpayers' adjusted gross income for the year in question exceeded $45,000, there is plainly no basis under the statute for allowing a deduction for any portion of the child care expenses here in issue.

On brief, the taxpayers do not contend that the claimed deduction is allowable under Section 214. Rather, the taxpayers base their claim for a deduction on Internal Revenue Service Publication 17, Your Federal Income Tax, 1973 Edition (hereinafter cited as Publication 17). The taxpayers argue that Publication 17 places the adjusted gross income limitation on in-house expenditures only, not on out-of-house expenditures.

3/ As the Tax Court noted, the income limitation provisions of Section 214(d) have been amended, for years beginning after March 29, 1975, to provide for a reduction of the amount allowable as a deduction only where adjusted gross income exceeds $35,000. Accordingly, the Regulations quoted above provide for different limitations for years beginning before and after that date.

They further argue that the Commissioner is bound by this publication, and that they are therefore entitled to deduct the child care expenses here in issue without regard to the income limitations of Section 214(d) since these expenses were incurred for child care outside taxpayers' home. As the Tax Court concluded, these contentions are wrong on all counts.

In the first place, as Judge Tannenwald concluded (Op. 3), whatever lapses there may otherwise be in the organization of the publication's discussion of the limitations on deductions for child care and disabled dependent care,[4/] the publication does not purport to dispense with the limitation provided under Section 214(d) in the case of child care expenses incurred out of the home, and, indeed, does not make any explicit distinction between child care services performed within the household and those performed outside the home.

In any event, as the Tax Court further concluded (Op. 3), even if taxpayers' interpretation of Publication 17 were correct, it is well settled that the Commissioner is not estopped by virtue of such publications and that the provisions of the statutes alone are controlling.[5/]

4/ Pages 97 and 98 of Publication 17, dealing with such deductions, were introduced as Exhibit 2-B to the Stipulation of Facts filed by the parties in the court below.

5/ Indeed, even if traditional estoppel principles were applicable in the case of pamphlets and other publications issued by the Commissioner, it is clear that taxpayers here did not rely to their detriment on Publication 17. They do not claim to have suffered any actual economic loss as the result of their asserted "reliance" on this publication. Rather, the only

For example, in Adler v. Commissioner, 330 F.2d 91 (C.A. 9, 1964), the taxpayer claimed that he was misled by the language used in the Government's pamphlet Your Federal Income Tax for Individuals. The court rejected the taxpayers' plea for a deduction stating (p. 93): "Nor can any interpretation by taxpayers of the language used in government pamphlets act as an estoppel against the government, nor change the meaning of taxing statutes."

And, in Carpenter v. United States, 495 F.2d 175 (C.A. 5, 1974), the court agreed with Adler, supra. The court stated (p. 184):

> Finally, we do not overlook the taxpayer's argument that his claim of continued foreign residency during the entire year 1963 is consistent with instructions contained in the 1964 edition of U. S. Treasury Department Publication 54, "Tax Guide for U.S. Citizens Abroad" * * *. We do not fault the Treasury Department for trying to provide guidelines for taxpayers confronted with the bewildering maze of our tax laws, and we sympathize with the taxpayer who in fact relies upon what he accepts as an authoritative interpretation of the laws and of the Treasury publications. But nonetheless it is for the Congress and the courts and not the Treasury to declare the law applicable to a given situation.

5/ (Continued)
consequence of such reliance was their disappointed expectation that the expenditures in question would be deductible without regard to their income for the year in question. Whether or not that expectation was justified or reasonable under the circumstances, it would not provide a basis, in any event, for disregarding the statute or for allowing taxpayers here to obtain more favorable tax treatment than all other taxpayers similarly situated.

See also Green v. Commissioner, 59 T.C. 456 (1972), where the taxpayer also claimed to have relied on an Internal Revenue Service publication entitled Your Federal Income Tax. There the court denied the claimed deduction, stating (p. 458):

> In the first place, even if Your Federal Income Tax were construed to permit deduction of what would otherwise be nondeductible commuting expenses, it is clear that the sources of authoritative law in the tax field are the statute and regulations, and not informal publications such as Your Federal Income Tax.

In sum, a pamphlet such as Publication 17 is not the law which the courts and the Commissioner must apply, and cannot bind either the courts or the Commissioner. The clear implication of decisions such as Carpenter and Adler, supra, is that pamphlets such as Publication 17 are not to be viewed as supplements or amendments to taxing statutes, and do not have the force and effect of law. They do not prevent the Commissioner from properly applying the Internal Revenue Code.6/

6/ Indeed, the Supreme Court has held that the Commissioner is not bound even by formal rulings duly issued to the taxpayer in question (Automobile Club of Michigan v. Commissioner, 353 U.S. 180 (1957)), or by a published acquiescence in Tax Court decisions where taxpayer has entered the transaction in question in reliance on such acquiescence (Dixon v. United States, 381 U.S. 68 (1965)). It follows, a fortiori, that the Tax Court was correct here in rejecting taxpayers' asserted reliance on Publication 17 as a basis for disregarding Section 214(d). As the court indicated in Dixon, supra, in holding that the Commissioner was always free to correct his prior mistakes of law: "This principle is no more than a reflection of the fact that Congress, not the Commissioner, prescribes the tax laws." 381 U.S, p. 73.

II

THERE IS NO BASIS FOR HOLDING THAT INTEREST MAY NOT BE ASSESSED WITH RESPECT TO THE TAX DEFICIENCY DETERMINED BY THE TAX COURT

Interest on the amount of tax due but unpaid, is provided for in Code Section 6601(a) (26 U.S.C.) which reads:

> SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT OF TAX.
>
> (a) General Rule.--If any amount of tax imposed by this title * * * is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

Initially, it should be pointed out that the assessment of interest is not a penalty. The taxpayers are simply being charged for the use of the $831.39 of tax which they owed for tax year 1972. Thus, even though they may have acted in good faith, the taxpayers are not being prejudiced by having to pay interest on the deficiency. See Owens v. Commissioner, 125 F.2d 210 (C.A. 10, 1942); Goodding v. United States, 35 A.F.T.R. 2d 1344 (S.D. Iowa, Apr. 2, 1975).

On brief, the taxpayers do not argue that Code Section 6601 is not applicable, but rather they argue (Br. 2) that they should not be required to pay such interest because of their asserted reliance on Publication 17, and because of a telephone conversation they had with a Mr. Starr, apparently an Internal Revenue Service employee, who allegedly told the taxpayers that he would accept some sort of affidavit from them in lieu of any interest due. As discussed above, however, Publication 17 cannot estop the Commissioner from properly applying the

Internal Revenue Code. By the same token, a conversation with an Internal Revenue Service employee cannot bind the Commissioner.

In O'Reilly v. Commissioner, P-H Memo T.C., par 74,261 (1974), the taxpayers also sought a child care deduction pursuant to Code Section 214. The taxpayer in O'Reilly, supra, telephoned the local office of the Internal Revenue Service and was told by an unidentified individual that any legitimate expense which allows one to earn taxable income is deductible. The Tax Court did not allow that statement to prevent the Commissioner from denying the deduction. Similarly, in Wilkinson v. United States, 304 F.2d 469 (Ct. Cl., 1962), the court rejected taxpayer's argument that the oral statement of a revenue agent should bind the United States, stating (p. 475):

> Courts have uniformly held that the taxpayers cannot rely with impunity on representations or statements of Revenue agents. Restating this principle, the assertions or representations of a Revenue agent, pertaining to a question of law, are not binding upon the United States.

See also, e.g., Darling v. Commissioner, 49 F.2d 111 (C.A. 4, 1931); United States v. Globe Indemnity Co., 94 F.2d 576 (C.A. 2, 1938); and Bornstein v. United States, 345 F.2d 558, 562 (Ct. Cl., 1965).

There is simply no basis for distinguishing, in this regard, between the taxpayers' liability for the deficiency in tax itself and their liability for interest which might be assessed with respect to such deficiency under Section 6601. In any event, however, the question of interest is not properly

before this Court on appeal from the Tax Court's decision, which simply sustained the Commissioner's determination with respect to the deficiency in tax, and which does not purport to determine taxpayer's liability for interest. Indeed, the Tax Court's jurisdiction extends only to the deficiency determination itself, and does not extend to matters pertaining to interest which may be assessed on such tax deficiencies once the Tax Court's decision is entered.7/ See, e.g., Commissioner v. Kilpatrick's Estate, 140 F.2d 887 (C.A. 6, 1944); Chapman v. Commissioner, 14 T.C. 943, 946-947 (1950), aff'd per curiam, 191 F.2d 816 (C.A. 9, 1951); and American Robal Corp. v. Commissioner, P-H Memo T.C., para. 54,173, pp. 542-543 (1954), aff'd, per curiam, 220 F.2d 749 (C.A. 2, 1955). Thus, even if taxpayers' objection to the assessment of interest were meritorious, their remedy would be to pay the interest so assessed

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7/ Ordinarily, of course, where taxpayer seeks the redetermination of the deficiency in the Tax Court, Section 6213 of the Code (26 U.S.C.) prohibits the Commissioner from assessing the tax, and interest due under Section 6601, until a final Tax Court decision is entered. An exception is provided under Section 6861 (26 U.S.C.), however, if the Commissioner determines that the assessment or collection of a deficiency will be jeopardized by delay. If interest is assessed at the same time, the Tax Court is then given jurisdiction by Section 6861(c) with respect to the interest as well as taxes so assessed. See Riss & Co. v. Commissioner, 45 T.C. 230 (1965). Such provisions have no applicability in this case.

and to institute appropriate refund proceedings.[8/] See, e.g., Decker v. United States, 531 F.2d 543 (Ct.Cl., 1976).

CONCLUSION

The decision of the Tax Court should be affirmed.

Respectfully submitted,

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Tax Division,
Department of Justice,
Washington, D.C. 20530.

OCTOBER, 1976.

8/ Taxpayers also suggest (Br. 3) that they are entitled to a refund of $19.50 which they assert was paid by them over the years for Publication 17, and various other editions of "Your Federal Income Tax." Again, such a refund claim is not within the jurisdiction of the Tax Court, and, thus, is not properly before this Court on review of the Tax Court's decision.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on appellants, appearing pro se, by mailing four copies thereof on this 20th day of October, 1976, in an envelope, with postage prepaid, properly addressed to them as follows:

Egon Radvany and
Ruth Radvany
850 Amsterdam Avenue
New York, New York 10025

Gilbert E. Andrews

GILBERT E. ANDREWS,
Attorney.

APPENDIX A

Internal Revenue Code of 1954 (26 U.S.C.):

Sec. 214. [as amended by Sec. 210(a), Revenue Act of 1971, P.L. 92-178, 85 Stat. 497]. EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT

(a) Allowance of Deduction.--In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a deduction the employment-related expenses (as defined in subsection (b)(2)) paid by him during the taxable year.

(b) Definitions, Etc.--For purposes of this section--

(1) Qualifying individual.--The term "qualifying individual" means--

(A) a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under section 151(e),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) Employment-related expenses.--The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(A) expenses for household services, and

(B) expenses for the care of a qualifying individual.

(3) Maintaining a household.--An individual shall be treated as maintaining a household for any period only if over half of the cost of maintaining the household during such period is furnished by such individual (or if such individual is married during such period, is furnished by such individual and his spouse).

(c) Limitations on amounts deductible.--

(1) In General.--A deduction shall be allowed under subsection (a) for employment-related expenses incurred during any month only to the extent such expenses do not exceed $400.

(2) Expenses must be for services in the household.--

(A) In general.--Except as provided in subparagraph (B), a deduction shall be allowed under subsection (a) for employment-related expenses only if they are incurred for services in the taxpayer's household.

(B) Exception.--Employment-related described in subsection (b)(2)(B) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of a qualifying individual described in subsection (b)(1)(A) and only to the extent such expenses incurred during any month do not exceed--

(i) $200, in the case of one such individual,

(ii) $300, in the case of two such individuals, and

(iii) $400, in the case of three or more such individuals.

(d) Income Limitation--If the adjusted gross income of the taxpayer exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred during any month of such year which may be taken into account under this section shall (after the application of subsections (e)(5) and (c)) be further reduced by that portion of one-half of the excess of the adjusted gross income over $18,000 which is properly allocable to such month. For purposes of the preceding sentence, if the taxpayer is married during any period of the taxable year, there shall be taken into account the combined adjusted gross income of the taxpayer and his spouse for such period.

(e) Special Rules.--For purposes of this section--

(1) Married couples must file joint return.--If the taxpayer is married at the close of the taxable year, the deduction provided by subsection (a) shall be allowed only if the taxpayer and his spouse file a single return jointly for the taxable year.

(2) Gainful employment requirement.--If the taxpayer is married for any period during the taxable year, there shall be taken into account employment-related expenses incurred during any month of such period only if--

(A) both spouses are gainfully employed on a substantially full-time basis, or

(B) the spouse is a qualifying individual described in subsection (b)(1)(C).

(3) Certain married individuals living apart.--An individual who for the taxable year would be treated as not married under section 143(b) if paragraph (1) of such section referred to any dependent, shall be treated as not married for such taxable year.

(4) Payments to related individuals.--No deduction shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual bearing a relationship to the taxpayer described in paragraphs (1) through (8) of section 152(a) (relating to definition of dependent) or to a dependent described in paragraph (9) of such section.

(5) Reduction for certain payments.--In the case of employment-related expenses incurred during any taxable year solely with respect to a qualifying individual (other than an individual who is also described in subsection (b)(1)(A)), the amount of such expenses which may be taken into account for purposes of this section shall (before the application of subsection (c)) be reduced--

(A) if such individual is described in subsection (b)(1)(B), by the amount by which the sum of--

(i) such individual's adjusted gross income for such taxable year, and

(ii) the disability payments received by such individual during such year,

exceeds $750, or

(B) in the case of a qualifying individual described in subsection (b)(1)(C), by the amount of disability payments received by such individual during the taxable year.

For purposes of this paragraph, the term "disability payment" means a payment (other than a gift) which is made on account of the physical or mental condition of an individual and which is not included in gross income.

(f) Regulations.--The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R):

§ 1.214A-1 Certain expenses to enable individuals to be gainfully employed for taxable years beginning after December 31, 1971.

(a) In general. (1) For expenses incurred in taxable years beginning after December 31, 1971, section 214 allows, subject to the requirements of this section and §§ 1.214A-2 through 1.214A-5, a deduction for employment-related expenses (as defined in paragraph (c) of this section) which are paid during the taxable year by an individual who maintains a household (within the meaning of paragraph (d) of this section) which includes as a member one or more qualifying individuals (as defined in paragraph (b) of this section). The deduction for expenses allowed under section 214 may be taken only as an itemized deduction and may not be taken into account in determining adjusted gross income under section 62. No deduction shall be allowed under section 214 in respect of any expenses incurred during a taxable year beginning after March 29, 1975, for which the taxpayer's adjusted gross income is

$44,600 or more (or incurred during a taxable year beginning after December 31, 1971, and before March 30, 1975, for which the taxpayer's adjusted gross income is $27,600 or more). Expenses which are taken into account in determining the deduction under section 214--

(i) Must first be reduced by that amount by which a disabled dependent's (age 15 or over) adjusted gross income and nontaxable disability payments for the taxable year exceed $750 or by the total amount of a disabled spouse's nontaxable disability payments (see section 214(e)(5) and § 1.214A-3),

(ii) Are then disallowed to the extent that, for any calendar month, they exceed $400, determined after taking into account the $200 (or more) per calendar-month limitation on the amount of expenses incurred outside the household for the care of a dependent (or dependents) under the age of 15 (see section 214(c)(1) and (2) and § 1.214A-2 and (b)), and

(iii) Finally, when the taxpayer's adjusted gross income for the taxable year exceeds the sum of $35,000 (or 18,000 in the case of a taxable year beginning after December 31, 1971, and before March 30, 1975), must be further reduced, on a monthly basis, by one-half of the amount by which the adjusted gross income for the calendar year exceeds such sum (see section 214(d) and § 1.214A-2(c)).

APPENDIX B

UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 7560-74

EGON RADVANY AND RUTH RADVANY
850 Amsterdam Ave.
New York, New York 10025 PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE. RESPONDENT.

APPEARANCES FOR PETITIONER:
NAME
ADDRESS

Date (Month Day Year)	Filings and Proceedings	Action	Served
Sept 11,1974	PETITION FILED: FEE PAID Sept.11,1974		Sept.12,1975
Sept.11,1974	REQUEST by Petr. for trial at New York, New York	GRANTED Sept. 12, 1974	Sept. 12, 1975
Oct. 23, 1974	ANSWER by Resp. filed.		Oct. 24, 1975
Jan. 14, 1976	NOTICE OF TRIAL on April 19, 1976 at New York, New York		Jan. 14, 1976
Jan. 21, 1976	NOTICE OF CHANGE OF TRIAL DATE to April 20, 1976.		Jan. 21, 1976
Apr. 20,21, 1976	TRIAL at New York, N.Y. before Judge Tannenwald.		
	Stipulation of facts with attached exhibits filed 4/21/76.		
	(No Briefs due)		
	SUBMITTED TO JUDGE TANNENWALD.		
May 18, 1976	TRANSCRIPT of Apr. 21, 1976 rec'd.		
May 27, 1976	MEMORANDUM FINDINGS OF FACT & OPINION filed, Judge Tannenwald.		MAY 27 1976
	(Decision will be entered for Resp.)		
May 27, 1976	DECISION entered, Judge Tannenwald.		May 27, 1976
	APPELLATE PROCEEDINGS		
July 22, 1976	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petrs.		July 22,1976
July 22, 1976	NOTICE of Filing with copy of notice of appeal sent to Mr. Meade Whitaker, Chief Counsel.		July 22,1976
July 22, 1976	NOTICE, to parties, of assembling and date for transmission of the record.		July 22,1976

Form No. 3
May 1970

UNITED STATES TAX COURT

WASHINGTON

EGON RADVANY and RUTH RADVANY, Petitioners,	)	
v.	)	Docket No. 7560-74
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed May 27, 1976, it is

ORDERED and DECIDED: That there is a deficiency in income tax for the taxable year 1972 in the amount of $831.39.

(Signed) THEODORE TANNENWALD, JR.

Judge

Enter: ENTERED MAY 27 1976

Decision is correct and in accord with stipulation, opinion or Rule 50 computation.

(Attorney) 6/3/76 (Date)

T. C. Memo. 1976-169

UNITED STATES TAX COURT

EGON RADVANY and RUTH RADVANY, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 7560-74 Filed May 27, 1976.

Ruth Radvany, pro se.

Paul E. Vignone, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

TANNENWALD, Judge: Respondent determined a deficiency of $831.39 in petitioners' income tax for the taxable year 1972. The sole issue is whether petitioners are entitled to a deduction for child care expenses under section 214.[1]

Petitioners, husband and wife, resided in New York, N.Y., at the time the petition herein was filed. During the taxable year 1972, they had adjusted gross income of $45,522.22 and paid $1,779.00 for employment-related expenses.

Section 214 provides for a deduction of such expenses, and respondent does not question petitioners' right to the deduction on any ground other than their failure to satisfy the requirement of subsection (d) of that section which specifies that the deduction be reduced by one half of the excess of petitioners' adjusted gross income over $18,000.[2]

---

[1] All references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable year in issue.

[2] The figure has been raised to $35,000 for taxable years beginning after March 29, 1975. See Pub. L. 94-12, sec. 206, 94th Cong., 1st Sess. (1975).

Petitioners' sole defense rests upon the proposition that under the instructions contained in Internal Revenue Publication 17, "Your Federal Income Tax 1973 Edition" for use in preparing 1972 returns, the foregoing limitation does not apply to employment-related expenses incurred for services rendered outside the household[3] as contrasted with those incurred for services rendered in the household.

Petitioners' contention must be rejected. In the first place, we think that a proper reading of respondent's publication indicates that there is no such distinction as petitioners seek to draw and that the $18,000 limitation applies across the board. In the second place, even if petitioners' interpretation of respondent's publication were correct, the statute itself makes no such distinction and accordingly neither we nor respondent would be bound to accept petitioners' contention. See Carpenter v. United States, 495 F.2d 175, 184 (5th Cir. 1974); Thomas J. Green, Jr., 59 T.C. 456, 458 (1972), and cases cited therein.

Decision will be entered for respondent.

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[3] According to petitioners, the expenditures involved herein were for child care at a nursery school and respondent does not dispute this fact. Consequently, they qualify as employment-related expenses. See sec. 1.214-1(f)(2), Income Tax Regs.